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CHANDIGARH ADMINISTRATION
HOME DEPARTMENT

Notification

The 16th February, 2024

No. 9/5/11-IH(I)/2024/2096.—In continuation to Chandigarh Administration, Home Department's notification No. 9/5/11-IH(I)/2019/17317-22, dated 14.11.2019, No. 9/5/11-IH(I)/2020/9346-52, dated 08.09.2020, No. 9/5/11-IH(I)/2021/1923-29, dated 19.02.2021, No. 9/5/11-IH(I)/2021/6527-33, dated 03.05.2021, No. 9/5/11-IH(I)/2021/9679-85, dated 14.07.2021, No. 9/5/11-IH(I)/2022/1562-1568, dated 27.01.2022, No. 9/5/11-IH(I)/2022/11114-11120, dated 13.07.2022, No. 9/5/11-IH(I)/2023/2077-2083, dated 14.02.2023 and No. 9/5/11-IH(I)/2023/12549-12555, dated 25.08.2023 and in exercise of the powers conferred under rule 8 (iv) of the Census Rules, 1990 framed under Census Act, 1948, the Administrator, Union Territory Chandigarh is pleased to notify that the date of freezing of administrative boundaries of all the Districts, Tehsils, Villages, Towns etc. is hereby extended from 31st December, 2023 to 30th June, 2024. The boundaries of the Administrative units for the ensuing census will be frozen with effect from 01st July, 2024. No changes shall be effected after 30th June, 2024 till census is over since finalization of administrative units is a pre-requisite for successful conduct of Census.

Chandigarh :
The 12th February, 2024.

NITIN KUMAR YADAV, IAS,
Home Secretary,
Chandigarh Administration.

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Jalinder Kumar
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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 2nd February, 2024

No. 13/1/9736-HII(2)-2024/1869.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **20/2020** dated **06.11.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

GURPREET SINGH S/O S.AMARJIT SINGH R/O VILLAGE & POST OFFICE JALLAH, TEHSIL & DISTRICT, FATEHGARH SAHIB. (Workmen)

AND

1. M/S DAINIK BHASKAR CORPORATION LIMITED, PLOT NO. 280, SARKHEJ GHANDINAGAR HIGHWAY, NEAR YMCA CLUB, MAKARBA, AHMEDABAD, GUJARAT-380051 THROUGH ITS MANAGING DIRECTOR.
2. DAINIK BHASKAR NEWSPAPER, DAINIK BHASKAR CORPORATION LIMITED, CHANDIGARH UNIT, PLOT NO.11-12, GROUND FLOOR, DAKSHIN MARG, SECTOR 25, CHANDIGARH - 160036 THROUGH ITS AGM HR & Admn. (Management)

AWARD

1. Vide Endorsement No.13/1/9736-HII(2)-2020/4926 Dated 19.03.2020 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the claim application filed by Gurpreet Singh (*hereinafter referred "claimant"*) to the M/s Dainik Bhaskar Corporation Limited & Another (*hereinafter referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*hereinafter in short referred "Act 1955"*) in following words:-

"Whether the arrears of revision of pay to Sh. Gurpreet Singh son of S. Amarjit Singh resident of village and post office Jallah, Tehsil & District, Fatehgarh Sahib (Workman/ applicant) were to be paid by M/s Dainik Bhaskar Corporation Limited, Plot No.280, Sarkhej Ghandinagar Highway, Near YMCA Club, Makarba, Ahmedabad, Gujarat - 380051 through its Managing Director and Dainik Bhaskar Newspaper, Dainik Bhaskar Corporation Limited, Chandigarh Unit, Plot No.11-12, Ground Floor, Dakshin Marg, Sector 25, Chandigarh - 160036 through its AGM HR & Admn. (Managements) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"

2. Upon notice, the claimant-workman appeared through his Representative Shri Ajay Sharma. Statement of claim was filed on 26.03.2021.

3. Briefly stated the averments of claim statement are that the claimant was working as Helper with Dainik Bhaskar Newspaper having its registered office at Sector 25, Chandigarh. On account of revision of pay

& other allowances accrued on the acceptance of the recommendations of the Majithia Wage Board which were accepted by the Government of India and notified in the Gazette of India on 11.11.2011, a substantial amount is due from Dainik Bhaskar / employer which is denied. On account of fact that a large number of persons are employed in the various newspapers and periodical being published in India and such newspaper or periodical establishment had devised its own way of employing persons to run its working, the Government of India constituted the Press Commission to enquire into the conditions of employment of working journalists. The Press Commission made certain recommendations for improvement and regulation of such service conditions by means of legislation. Accordingly, The Working Journalists (Conditions of Service) and Miscellaneous Provisions Bill was introduced in the Parliament. Consequently, on 20.12.2015 the Act 1955 was enacted to regulate certain conditions of service including minimum period of notice, gratuity, provident fund, settlement of industrial dispute, leave with pay, hours of work and minimum wages of the Working Journalists and the other persons employed in the Newspaper Establishments. From the harmonious joint reading of the provisions of the Act 1955, it is apparent that the Central Government has been competent to fix and revise the wages of the journalists and other employees having been governed by the Act 1955. A procedure has been laid down for fixing and revising rate of wages for which a mandate is casted upon the Central Government to constitute a Wage Board in the manner prescribed in it, which shall examine all the relevant factors like cost of living, the prevalent rate of wages for comparable employment etc. for the ascertainment of the rate of wages and thereafter present its recommendation to the Central Government. On the receipt of such recommendation by the Wage Board, the Central Government is also competent to accept, reject and alter any of the recommendations as may deemed fit. Consequently, the Central Government shall notify the recommendations by way of an Award in the official Gazette of India. In pursuance to an exercise undertaken by Department of Labour and Employment, Union of India under Section 9 of Act 1955, the purpose of enabling the Central Government to fix or revise rate of wages for the working journalists and non-journalists newspaper employees, a Wage Board was constituted under the Chairmanship of Hon'ble Mr. Justice G. R. Majithia (Retd.) and the Wage Board was commonly known as Majithia Wage Board. After examining all the relevant factors regulating the revision of pay and affording opportunity to all the affected parties, the Majithia Wage Board finally submitted its recommendations on 31.12.2010 to the Union of India. On 25.10.2011 the Union of India accepted the same in toto without any modification. The said recommendations were further notified in the official Gazette vide notification dated 11.11.2011. On the publication of the recommendation of the Majithia Wage Board by way of an Award vide Gazette Notification dated 11.11.2011, various newspaper establishments and media houses vide W.P. (C) No.538 of 2011 had made a challenge under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India alleging Act 1955 being ultra-vires as it infringes the fundamental rights guaranteed under Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India. There was also a challenge to the validity of notification dated 11.11.2011 issued by the Union of India. The bunch of aforesaid petitions remained pending for hearing before the Hon'ble Apex Court for 3 years and ultimately while disagreeing with the contentions raised by the newspaper establishments and media houses, the Hon'ble Apex Court dismissed all the petitions vide its judgment dated 07.02.2014 while holding that the recommendations of Majithia Wage Board are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Despite the dismissal of the Writ Petitions challenging the validity of Act 1955 and notification dated 11.11.2011, and further directions of the Hon'ble Apex Court for payment of arrears, no compliance was being made by the news agencies. The employees had also taken up their issue before the management No.1 & 2 for payment of revised wages and arrears as per the directions of the Hon'ble Apex Court, however, they were told that a review application have been preferred by them and further course of action would be taken up after its adjudication. Another order dated 13.10.2017 was passed by the Hon'ble Apex Court clarifying the previous judgment dated 19.06.2017 to the extent that the disputes referred to adjudication under Section 17(2) of the Act 1955, will be disposed of by the concerned Labour Court / Industrial Tribunal as expeditiously as possible preferably within six months of the reference being made.

4. It is further averred that the claimant was appointed as Plumber in the Dainik Bhaskar Newspaper at Sirhind on 15.03.2010. The salary of the claimant was fixed @ ₹ 5,549/- per month including all perks and allowances. Initially he was on probation for 6 months and later on his services were regularised. Work & conduct of the claimant has been further appreciated in as much as the service record of the claimant has been exemplary good as no complaint whatsoever has ever been reported to the management from any quarter. The claimant has been earning his annual increments well on time apart from the annual bonus. The services of the claimant were being regulated under the Act 1955. On minute perusal of the notification, it is apparent that employees have been categorised in groups and as such the claimant falls within the ambit of working non-journalists being 'Helper' which is mentioned in Group 6 Factory Staff of the Schedule - III (Grouping of Non-journalists Newspaper Employees - Factory Staff). The request of the claimant and others was kept pending on the ground that the matter was being considered by the management and would take a decision expeditiously. Despite passage of more than 4 years of dismissal of Writ Petitions by the Hon'ble Apex Court, no payment was made except lame excuses given by the management. In the month of April, 2019 the claimant along with other employees has also been cautioned by the management that in case, they press upon their demand of recovery of dues, then they would be either transferred at other far distant places or their services would be terminated. Despite above, the claimant had been pressing his request of payment of arrears of salary as per the Majithia Wage Board recommendations upon the management No. 2, however, management No.2 started harassing the claimant by rejecting his leave applications, deploying at odd places, giving work out of his job profile and letting the claimant jobless for days together. The claimant has been continuously discharging his duties till date. The claimant is the only bread winner of his family and as such the entire family has been depending upon legitimate salary and arrears of the claimant which is to be paid by the managements. The amount which is liable to be recovered from the management based on revised pay on the basis of Majithia Wage Board is legitimate dues of the claimant and as such the claimant is not willing to forego the same in any manner. The claimant has got calculated his estimate revised salary and arrears of pay from a competent Chartered Accountant as per the Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, as such the total amount of ₹ 81,32,872/- including interest @ 18% per annum is due from the management. Despite the demand of detailed arrears of salary calculated as per Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, the management has intentionally and deliberately not been implementing the recommendations of the Majithia Wage Board and has not given any benefit to the claimant in spite of several oral and written requests. The claimant has not signed any declaration in order to waive of the benefits accrued under the Majithia Wage Board recommendations. The management had indulged in the process of denying the claims stating that the recommendations of the wage board were not applicable on the claimant and other employees and forcing the employees to sign on pre-typed formats and declarations illegally. The employees refusing to do so were being victimized by way of illegal transfer, suspension and other colourable exercise of the powers of the management and a reign of terror inside the establishment had been created by the management. The management be asked to furnish the details of the salary paid to the employee of the establishment before 07.02.2014 and being paid now and the reasons for non-implementation of the recommendations of the Majithia Wage Board by the management. The present claim is without prejudice to the rights of the claimant to the Contempt of Court proceedings against the management for its deliberate, willful and intentional violation of the order dated 07.02.2014 of Hon'ble Supreme Court. The cause of action of the claimant is continuous. As such, the present claim is being filed within period of limitation. The claimant has not filed any other claim or petition before any Court of Law except the present one. The claim application is accompanied with calculation sheet Annexure 'A3'. Prayer is made that Award may be passed directing the managements to implement the Majithia Wage Board recommendations and re-fix the pay of the claimant accordingly with further prayer directing the managements to release arrears of pay to the tune of ₹ 81,32,872/- as per Annexure 'A3' with costs and to pay interest @ 18% on the arrears of pay from the date of its accrual till actual payment.

5. On notice, the management No. 1 & 2 contested the claim application by filing joint written statement on 30.07.2021 wherein preliminary objections are raised on the ground that the workman filed the fresh reference

claiming re-fixation of pay and for recovery of ₹ 81,32,872/- as arrears of pay up to 01.02.2021 on account of implementation of recommendations of the Majithia Wage Board vide notification dated 11.11.2011 issued by Central Government by putting the wrong facts as well as by levelling the false allegations and by presenting the fabricated calculation sheet before this Tribunal. The claimant does not fall under the definition of the 'workman' as per Section 2(s)(ii to iv) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*). The claimant has failed to claim himself as 'workman' as per the provisions of the ID Act. As per the nature and status of post, the claimant does not fall within the definition of the 'workman' under the ID Act. The claim statement is liable to be dismissed on account of mis-joinder of the necessary parties as the alleged service rendered by the claimant with the answering management i.e. Chief Manager, HR (who has not been impleaded as party in the present reference) and authorities of Head Office have been impleaded by name. As per the facts, the recommendations of Majithia Wage Board were submitted to the Central Government on 31.12.2010 and same were notified by the Government of India on 11.11.2011. The said recommendations were put under challenge by various media agencies by way of filing the writ petitions before the Hon'ble Supreme Court of India and the said cases were adjudicated upon before the Hon'ble Supreme Court of India in February 2014. It is further stated that the submission of resignation is admitted by the claimant himself. It is well settled proposition of law that admission is the best evidence. Besides, the claimant had concealed the material fact that at the time of leaving the management after putting the resignation, had accepted all the service benefits and received full & final amount from the management and nothing remained pending / due and as such the present claimant has no right to contest the present reference being not maintainable. The procedure under the scheme of the Act 1955, aggrieved employee seeking to recover any amount under the Act 1955, is required to first move an application before the trial Government. As per Rule 36 of the Act 1955, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State Government along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, the above said requirement of Rule 36 of the Act 1955 has not been complied with. Hence, the proceeding in question is void *ab-initio*. As per Section 17 of the Act 1955, a Civil Suit does not lie after the expiry of 3 years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2020 for the benefit claimed by the claimant for the year 2011. The claimant has annexed the calculation sheet showing the turn-over of the management only to get the benefit from the management which is a dispute in question of fact and cannot be decided in summary proceedings before this Tribunal. A dispute in question of fact can only be adjudicated upon by the concerned Civil Court. The basis of computation of the amount claimed has not been indicated by the claimant. The identity of the person who has computed the said amount has not been revealed by the claimant. Hence, the same is frivolous and baseless. The answering managements do have the spirit to honour the judgment delivered by the Hon'ble Supreme Court of India but in the present reference the claimant is not entitled to any benefit in compliance of the judgments delivered by the Hon'ble Supreme of India. No amount is due to the claimant under the provisions of Section 17 of the Act 1955. Further the amount claimed is based on non-existing right. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant has voluntarily chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board. Now nothing is payable to the claimant. The claimant had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking which he had given within the specified time of 3 weeks. Now after lapse of long time the claimant is raising dispute of non-payment of wages as per the Majithia Wage Board recommendations which is a simply after thought, illegal and baseless. No complaint can be entertained after passing almost 8 years of lapse of prescribed period. Since the year 1956 various Wage Boards have been constituted from time to time and the option has been given to the employees to opt for payment of existing pay scale and existing emoluments in all the three various Wage Boards. The Majithia Wage Board was finally notified on 11.11.2011. The employees were informed about the Majithia Wage Board recommendations and para 20(j) of the same for payment of the existing pay scale and existing emoluments by affixing copy of the Majithia Wage Board recommendations

and notice on the notice board of the company. The employees have themselves opted to sign 20(j) of the Majithia Wage Board recommendations on their own accord and free will after well understanding the Majithia Wage Board recommendations. The allegations that employees signed 20(j) under coercion is totally false and baseless. The plea is beyond period of limitation. The plea of coercion is not tenable under Order VI Rule 4 CPC. The validity of para 20(j) of the Majithia Wage Board recommendations has not been challenged separately by any employees of any newspaper establishment even after 11.01.2014 . The management DB Corp. Ltd. is a group of businesses including textile, MyFM, digital media, real estate, power and denim. As per the Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted.

6. Further on merits, the contents of para 1 to 5, 7 & 8 are replied being matter of record. It is stated that the claimant is not entitled for the benefit of compliance of judgment passed by the Hon'ble Supreme Court of India. As per the group of the claimant and class of the Newspaper Establishment the claimant is receiving the wages and other benefits more than the Majithia Wage Board recommendations. It is specifically denied that the claimant is entitled for revised salary and pay from the management based on the Majithia Wage Board for the period 11.11.2011 to 01.09.2018. The claimant is not entitled for any financial benefits as well as interest and the claim put forth by the claimant is not a very higher side. The claim is not maintainable in the question-answer form. No cause of action has accrued to the claimant to file the present claim and the same is hopelessly time barred. Rest of the averments of claim statement are denied as wrong. Prayer is made that the reference may be dismissed with exemplary cost.

7. The claimant filed replication wherein the contents of the written statement except admitted facts are denied being without any basis and frivolous and averments of claim statement are reiterated.

8. From the pleadings of the parties, following were framed vide order dated 16.08.2021:—

1. Whether the arrears of revision of pay to the applicant are to be paid by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the applicant does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Whether the claim of the applicant is bad on the ground of mis-joinder and non-joinder of necessary parties ? OPM
4. Whether the claim of the applicant is time barred ? OPM
5. Whether the claim of the applicant is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
6. Relief.

9. In evidence claimant Gurpreet Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copy of documents Exhibit 'AW1/1' and Mark 'A'.

Exhibit 'AW1/1' is Gazette Notification dated 11.11.2011 of Government of India, Ministry of Labour & Employment.

Mark 'A' is calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Chartered Accountant Dhruv Gupta.

10. The claimant examined AW2 Dhruv Gupta, Chartered Accountant, who tendered his affidavit **Exhibit 'AW2/A'** along with documents Exhibit 'AW2/1' to Exhibit 'AW2/3'.

Exhibit 'AW2/1' is copy transaction inquiry in favour of Gurpreet Singh.

Exhibit 'AW2/2' is copy of Form 23-ACA, pursuant to Section 220 of the Company's Act, 1956.

Exhibit 'AW2/3' is the certificate dated 14.03.2021 issued by Dhruv Gupta, Partner for DGR & Associates Chartered Accountants.

11. The claimant also examined AW3 Avdhesh Gaur, who brought the summoned record and proved the copy of the same Exhibit 'AW3/1' to Exhibit 'AW3/4'.

Exhibit 'AW3/1' is annual appraisal letter dated 29.07.2015 for the financial year 2014-15.

Exhibit 'AW3/2' is annual appraisal letter dated 31.05.2015 for the financial year 2015-16.

Exhibit 'AW3/3' is annual appraisal letter dated 30.08.2018 for the financial year 2017-18 along with Annexure 'A'.

Exhibit 'AW3/4' is annual appraisal letter dated 30.04.2019 for the financial year 2018-19 along with Annexure 'A'.

12. On 03.10.2022 the Learned Representative for the claimant closed the evidence of the claimant-workman.

13. On the other hand, the managements examined MW1 Avdhesh Gaur-Assistant Manager HR Admn, Office of Dainik Bhaskar, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M3'.

Exhibit 'M1' is identity card of Avdhesh Guar.

Exhibit 'M2' is authority letter issued in favour of Avdhesh Gaur by DB Corp. Ltd.

Exhibit 'M3' is declaration dated 15.11.2011.

14. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide Exhibit 'MX'. It is pertinent to mention here that Exhibit 'MW1/A' is numbered twice i.e. affidavit of MW1 Avdhesh Gaur is numbered as Exhibit 'MW1/A' and declaration dated 15.11.2011 put by the management to AW3 in his cross-examination as Exhibit 'MW1/A'. In order to avoid any ambiguity, the affidavit of MW1 is renumbered and hereafter referred as 'MW1/AA'.

15. On 14.08.2023 Learned Representative for the management No. 1 & 2 closed oral evidence. On 06.11.2023 Learned Representative for management No.1 & 2 closed documentary evidence.

16. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1:

17. Onus to prove issue No.1 is on the workman.

18. Under this issue, the claimant Gurpeet Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 has supported his oral version with documents Exhibit 'AW1/1' and Mark 'A'.

19. In order to prove the calculation of the arrears claimed, claimant examined AW2 Dhruv Gupta-Chartered Accountant and Partner of the DRG and Associates Firm, who vide his affidavit Exhibit 'AW2/A' has proved that the calculation sheet prepared by him. AW2 has supported his oral version with documents Exhibit 'AW2/1' to Exhibit 'AW2/3'.

20. The claimant has examined AW3 Avdhesh Gaur - Assistant Manager, HR Admn. Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh, who proved on record documents Exhibit 'AW3/1' to Exhibit 'AW3/4' (as detailed above).

21. On the other hand, the management has examined MW1 Avdhesh Gaur - Assistant Manager, HR Admn Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh. (MW1 in his testimony referred the management as respondent and in cross-examination of AWs referred the claimant as workman. In order to avoid any ambiguity the workman is hereinafter referred as claimant and the respondent is hereinafter referred as management.) MW1 vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager - HR & Admin (CPH2) with the managements and has been authorised by the management to depose on its behalf in this case before this Court. He is well conversant with the facts of the present case. MW1 further deposed that DB Corp. Ltd. is group of businesses including textile, MY FM, Digital Media, Real Estate, Power, Denim. As per Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per Para 20(j) of the Majithia Wage Board recommendations. The claimant has chosen / opted to retain his existing wages and existing emoluments as per Para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as he has already received wages according to option opted by him as per Para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 further deposed that the claimant is not entitled for the benefit of the compliance of the judgment passed by the Hon'ble Supreme Court of India. MW1 has supported his oral version with documents Exhibit 'M1' to Exhibit 'M3'. It is penitent to mention here that in affidavit Exhibit 'MW1/A' the documents are referred as Annexure 'R1' to Annexure 'R3' which are proved into evidence vide Exhibit 'M1' to Exhibit 'M3' respectively.

22. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly the claimant was appointed as Plumber in the Dainik Bhaskar Newspaper on 15.03.2010. The salary of the claimant was fixed @ ₹ 5,549/- per month including all perks and allowances. After completion of probation period of six months, the services of the claimant were regularised. The claimant is still in the service of the management. In this regard AW1 Gurpeet Singh in his cross-examination stated that he is presently working with the management.

23. In the present case, the claimant is demanding arrears of pay as revised according to the recommendations of the Majithia Wage Board w.e.f. 11.11.2011 to 01.02.2021 as per notification dated 11.11.2011 / Exhibit 'AW1/1'. On the other hand, the managements have taken the plea that in view of the option exercised by the claimant under para 20(j) of the notification dated 11.11.2011, the claimant is not entitled to seek benefits of the Majithia Wage Board recommendations.

24. To my opinion, in order to decide whether para 20(j) of notification dated 11.11.2011 is attracted in this case, it would be apposite to go through para 20(j) of the said notification, which is reproduced as below:—

"20(j) The revised pay scales shall become applicable to all employees with effect from 1st July 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scales and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

25. The management had put declaration dated 15.11.2011 Exhibit 'MW1/A' in cross-examination of AW3 Avdhesh Gaur. The management has also proved in its evidence the claimant's declaration dated 15.11.2011 vide Exhibit 'M3'. Learned Representative for the claimant argued that declaration Exhibit 'MW1/A' /Exhibit

'M3' is not valid in the eyes of law as it does not bear any passing reference of the designation, employee code, department and place of posting etc. The said declaration is not addressed to any official, countersigned or signed by any witness, without verification, acceptance, place not mentioned and not even attested by any notary. There is no passing reference of the existing wages of the claimant, the said declaration is not voluntarily and has been obtained under duress and under threat of transfer / termination. It is also apparent that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant. It is further argued by Learned Representative for the claimant that the declaration is two-sided legal transaction which means there has to be a second party to the declaration. The alleged declaration is only signed by the claimant and there is no reference to whom the same is given, furnished. There is no counter-signature of the authority who had accepted it. On the other hand, it is argued by Learned Representative for the management that the declaration dated 15.11.2011 i.e. Exhibit 'MW1/A' / Exhibit 'M3' is a valid document and by way of exercising option in the form of above said declaration, the claimant has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. Therefore, nothing is payable to the claimant as he has already received wages according to the option opted by him under para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. It is further argued by Learned Representative for the management that the declaration Exhibit 'MW1/A' / Exhibit 'M3' is of dated 15.11.2011 and till date the claimant has not withdrawn the same alleging that it was obtained under pressure. Much stress has been laid upon the fact that the claimant has not withdrawn the said declaration as it was genuine and signed by him with his free consent. Learned Representative for the management referred case law reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi**.

26. To my opinion, the argument advanced by the Learned Representative for the claimant that declaration Exhibit 'MW1/A' / Exhibit 'M3' is signed by the claimant under pressure of illegal transfer, suspension is devoid of merits because the claimant / AW1 when put to cross-examination stated that he identifies his signatures on Exhibit 'MW1/A' which was signed on 15.11.2011 and till date he has not raised any protest regarding the same. AW1 in his cross-examination further admitted as correct that during his entire tenure with the management he was not transferred. AW1 admitted as correct that during his entire service till date with the management he has been receiving his full wages. AW1 admitted as correct that till date he has not been removed or transferred from his service. AW1 admitted as correct that the management has not transferred him after filing of the present case and also not denied the payment of wages of the said period. AW3 Avdhesh Gaur in his cross-examination admitted as correct that during his service with the management, the claimant has signed a declaration dated 15.11.2011 and copy of the same is Exhibit 'MW1/A' (at the time of recording testimony of AW3 the original declaration dated 15.11.2011 was produced which was seen and returned). AW3 admitted as correct that Exhibit 'MW1/A' is part of the service guidelines of the claimant. AW3 stated that the claimant has not raised any claim before the management for the grant of Majithia Wage Board. The claimant in cross-examination of MW1 Avdhesh Gaur has taken the plea that the declaration is ante-dated and was procured in the year 2016. MW1 denied the suggestion as wrong that the declaration is ante-dated and was procured in the year 2016. To my opinion the aforesaid suggestion put to MW1 would led to the inference that the claimant has not disputed his signatures on declaration dated 15.11.2011 Exhibit 'MW1/A' / Exhibit 'M3'. The claimant's plea that his signatures on the declaration were obtained in the year 2016 is not acceptable as no such plea was raised by the claimant in his claim statement. To the contrary it is pleaded in the claim statement that claimant has not signed any declaration / settlement with any of the management whatsoever in order to waive off the benefits accrued under the Majithia Wage Board recommendations. In this manner, there is a complete denial of signing any declaration by the claimant in his claim statement. Both the pleas raised by the claimant i.e. non-signing of any declaration and obtaining his signature on declaration in the year 2016 are self-contradictory and destructive to each other. Moreover, the claimant has failed to controvert the

fact that before obtaining option under para 20(j) of notification dated 11.11.2011 the management had put the notice dated 12.11.2011 /Exhibit 'MX' on the notice board to apprise its employees about their right to exercise the option. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide Exhibit 'MX'. MW1 has denied the suggestion as wrong that notice is prepared afterwards. As per the settled law the suggestion denied by a witness is no evidence unless proved otherwise. The claimant has failed to bring on record any evidence to controvert the genuineness of notice Exhibit 'MX'. From the discussion made above, it is duly proved on record that the declaration dated 15.11.2011 Exhibit 'MW1/A' / Exhibit 'M3' is signed by the claimant on 15.11.2011 with his free will and consent and after knowing the contents thereof.

27. The claimant's plea that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant is also devoid of merits. There is no illegality, even if, the managements for the convenience of its employees supplied a proforma to exercise option under para 20(j) of notification dated 11.11.2011. It is for the concerned employee herein claimant to fill-in the proforma by exercising his own discretion. Since the claimant has given written declaration dated 15.11.2011 Exhibit 'MW1/A' / Exhibit 'M3', thereby exercised option to retain his existing pay scales and existing emoluments, without any protest, thus the claimant is estopped from seeking the arrears of revised pay as calculated by the Chartered Accountant. The case law referred by Learned Representative for the managements reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G. Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi** are applicable to the present case to an extent.

28. In view of the aforesaid discussion, the claimant is not entitled to receive arrears of revised pay.

29. Accordingly, this issue is decided against the claimant-workman and in favour of management No. 1 & 2.

Issue No. 2:

30. Onus to prove this issue is on the managements.

31. Learned Representative for the managements argued that the claimant does not fall within the definition of the 'workman' as defined under Section 2(s) of the ID Act as the nature of the work assigned to the claimant was supervisory. On the other hand, Learned Representative for the claimant argued that the claimant was not having any managerial or supervisory position. The claimant was not having any power to appoint / dismiss any employee and also had no power to grant leave to any employee. To support his arguments Learned Representative for the claimant referred case law reported in **2006(4) SCT 1** titled as **Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah** in para 11 to 13 held as below:-

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

13. *The precise question came up for consideration in **Ananda Bazar Patrika (P) Ltd. v. Workmen** [(1970)3 SCC 248] wherein it was held :*

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity....."

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. Ananda Bazar Patrika (supra) was followed by the court in large number of cases."

32. In the present case, it is undeniable fact that the claimant was appointed to the post of Plumber. The management has failed to bring on record any oral or documentary evidence to show that the workman was discharging any kind of supervisory or managerial or administrative functions.

In the absence of aforesaid evidence, it cannot be said that the claimant was exercising powers of control or supervision. The judgment **2006(4) SCT 1 (supra)** is applicable to the facts of the present case to an extent. Consequently, the management has failed to prove that the claimant had any authority to initiate departmental proceedings against the subordinates or he had power of control or supervision in regard to recruitment, promotion etc. The management even failed to prove that the claimant had authority to sanction leave to any employee. The claimant, therefore, is a 'workman' as defined under Section 2(s) of the ID Act.

33. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Issue No. 3 &5:

34. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

35. Onus to prove both these issues is on the managements. During course of arguments both these issues are not pressed by the managements.

36. Accordingly, both these issues are decided against management No. 1 & 2 and in favour of the claimant-workman.

Issue No. 4:

37. Onus to prove this issue is on the managements.

38. Learned Representative for the managements contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand

notice was received by the Assistant Labour Commissioner, Chandigarh in February 2020 for the benefit claimed by the claimant for the year 2011. On the other hand, Learned Representative for the claimant argued that the claimant is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Assistant Labour Commissioner, U.T. Chandigarh on 19.03.2020. Thus, the claim of the claimant is well within time in as much as the cause of action in the present case is recurring in nature.

39. As proved from the documents on judicial file, the claim raised the application under Section 17(1) of the Act 1955 before the Labour Commissioner, U.T. Chandigarh on 05.11.2019 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal / Court vide reference dated 19.03.2020. Moreover, the contention raised by Learned Representative for the claimant carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

40. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Relief :

41. In the view of foregoing finding on the issue No.1 above, this reference is declined and answered against the claimant-workman. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 06.11.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 2nd February, 2024

No. 13/1/9756-HII(2)-2024/ 1871.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **71/2020** dated **06.11.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

GURINDER SINGH R/O VILLAGE PANDRALI, PO CHANARTHAL KALAN, DISTRICT
FATEHGARH (Workmen)

AND

1. M/S DAINIK BHASKAR CORPORATION LIMITED, PLOT NO. 280, SARKHEJ GHANDINAGAR HIGHWAY, NEAR YMCA CLUB, MAKARBA, AHMEDABAD, GUJARAT - 380051 THROUGH ITS MANAGING DIRECTOR.

2. M/S DAINIK BHASKAR CORPORATION LIMITED, CHANDIGARH UNIT, PLOT NO.11-12, GROUND FLOOR, DAKSHIN MARG, SECTOR 25, CHANDIGARH - 160036 THROUGH ITS CHIEF EXECUTIVE. (Management)

AWARD

1. Vide Endorsement No.13/1/9756-HII(2)-2020/12011 dated 11.09.2020 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court /Tribunal on the claim application filed by Gurinder Singh (*hereinafter referred "claimant"*) to the M/s Dainik Bhaskar Corporation Limited & Another (*hereinafter referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*hereinafter in short referred "Act 1955"*) in following words:—

"Whether the arrears of revision of pay to namely Sh. Gurinder Singh, Resident of Village Pandrali, PO Chanarthal Kalan, District Fatehgarh Sahib -140406 (Workman/applicant) were to be paid by M/s Dainik Bhaskar Corporation Limited, Plot No. 280, Sarkhej Ghandinagar Highway, Near YMCA Club, Makarba, Ahmedabad, Gujarat - 380051 through its Managing Director and M/s Dainik Bhaskar Corporation Limited, Chandigarh Unit, Plot No.11-12, Ground Floor, Dakshin Marg, Sector 25, Chandigarh - 160036 through its Chief Executive (Managements) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"

2. Upon notice, the claimant-workman appeared through his Representative Shri Ajay Sharma. Statement of claim was filed on 26.03.2021.

3. Briefly stated the averments of claim statement are that the claimant was working as Helper with Dainik Bhaskar Newspaper having its registered office at Sector 25, Chandigarh. On account of revision of pay & other allowances accrued on the acceptance of the recommendations of the Majithia Wage Board which were accepted by the Government of India and notified in the Gazette of India on 11.11.2011, a substantial

amount is due from Dainik Bhaskar / employer which is denied. On account of fact that a large number of persons are employed in the various newspapers and periodical being published in India and such newspaper or periodical establishment had devised its own way of employing persons to run its working, the Government of India constituted the Press Commission to enquire into the conditions of employment of working journalists. The Press Commission made certain recommendations for improvement and regulation of such service conditions by means of legislation. Accordingly, The Working Journalists (Conditions of Service) and Miscellaneous Provisions Bill was introduced in the Parliament. Consequently, on 20.12.2015 the Act 1955 was enacted to regulate certain conditions of service including minimum period of notice, gratuity, provident fund, settlement of industrial dispute, leave with pay, hours of work and minimum wages of the Working Journalists and the other persons employed in the Newspaper Establishments. From the harmonious joint reading of the provisions of the Act 1955, it is apparent that the Central Government has been competent to fix and revise the wages of the journalists and other employees having been governed by the Act 1955. A procedure has been laid down for fixing and revising rate of wages for which a mandate is casted upon the Central Government to constitute a Wage Board in the manner prescribed in it, which shall examine all the relevant factors like cost of living, the prevalent rate of wages for comparable employment etc. for the ascertainment of the rate of wages and thereafter present its recommendation to the Central Government. On the receipt of such recommendation by the Wage Board, the Central Government is also competent to accept, reject and alter any of the recommendations as may deemed fit. Consequently, the Central Government shall notify the recommendations by way of an Award in the official Gazette of India. In pursuance to an exercise undertaken by Department of Labour and Employment, Union of India under Section 9 of Act 1955, the purpose of enabling the Central Government to fix or revise rate of wages for the working journalists and non-journalists newspaper employees, a Wage Board was constituted under the Chairmanship of Hon'ble Mr. Justice G. R. Majithia (Retd.) and the Wage Board was commonly known as Majithia Wage Board. After examining all the relevant factors regulating the revision of pay and affording opportunity to all the affected parties, the Majithia Wage Board finally submitted its recommendations on 31.12.2010 to the Union of India. On 25.10.2011 the Union of India accepted the same in toto without any modification. The said recommendations were further notified in the official Gazette vide notification dated 11.11.2011. On the publication of the recommendation of the Majithia Wage Board by way of an Award vide Gazette Notification dated 11.11.2011, various newspaper establishments and media houses vide W.P. (C) No.538 of 2011 had made a challenge under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India alleging Act 1955 being ultra-virus as it infringes the fundamental rights guaranteed under Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India. There was also a challenge to the validity of notification dated 11.11.2011 issued by the Union of India. The bunch of aforesaid petitions remained pending for hearing before the Hon'ble Apex Court for 3 years and ultimately while disagreeing with the contentions raised by the newspaper establishments and media houses, the Hon'ble Apex Court dismissed all the petitions vide its judgment dated 07.02.2014 while holding that the recommendations of Majithia Wage Board are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Despite the dismissal of the Writ Petitions challenging the validity of Act 1955 and notification dated 11.11.2011, and further directions of the Hon'ble Apex Court for payment of arrears, no compliance was being made by the news agencies. The employees had also taken up their issue before the management No.1 & 2 for payment of revised wages and arrears as per the directions of the Hon'ble Apex Court, however, they were told that a review application have been preferred by them and further course of action would be taken up after its adjudication. Another order dated 13.10.2017 was passed by the Hon'ble Apex Court clarifying the previous judgment dated 19.06.2017 to the extent that the disputes referred to adjudication under Section 17(2) of the Act 1955, will be disposed of by the concerned Labour Court / Industrial Tribunal as expeditiously as possible preferably within six months of the reference being made.

4. It is further averred that the claimant was appointed as Helper in Production Division of the Dainik Bhaskar Newspaper on 06.10.2012. The salary of the claimant was fixed @ ₹ 6,000/- per month including all perks and allowances. Initially he was on probation for 6 months and later on his services were regularised.

Work & conduct of the claimant has been further appreciated in as much as the service record of the claimant has been exemplary good as no complaint whatsoever has ever been reported to the management from any quarter. The claimant has been earning his annual increments well on time apart from the annual bonus. The services of the claimant were being regulated under the Act 1955. On minute perusal of the notification, it is apparent that employees have been categorised in groups and as such the claimant falls within the ambit of working non-journalists being 'Helper' which is mentioned in Group 6 Factory Staff of the Schedule - III (Grouping of Non-journalists Newspaper Employees - Factory Staff). In the month of February 2019, the claimant along with other employees has also been cautioned by the management that in case, they press upon their demand of recovery of dues, then they would be either transferred at other far distant places or their services would be terminated. The amount which is liable to be recovered from the management based on revised pay on the basis of Majithia Wage Board is legitimate dues of the claimant and as such the claimant is not willing to forego the same in any manner. The claimant has got calculated his estimate revised salary and arrears of pay from a competent Chartered Accountant as per the Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, as such the total amount of ₹ 33,39,811/-including interest @ 18% per annum is due from the management. Despite the demand of detailed arrears of salary calculated as per Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, the management has intentionally and deliberately not been implementing the recommendations of the Majithia Wage Board and has not given any benefit to the claimant in spite of several oral and written requests. The claimant has not signed any declaration in order to waive of the benefits accrued under the Majithia Wage Board recommendations. The management had indulged in the process of denying the claims stating that the recommendations of the wage board were not applicable on the claimant and other employees and forcing the employees to sign on pre-typed formats and declarations illegally. The employees refusing to do so were being victimized by way of illegal transfer, suspension and other colourable exercise of the powers of the management and a reign of terror inside the establishment had been created by the management. The management be asked to furnish the details of the salary paid to the employee of the establishment before 07.02.2014 and being paid now and the reasons for non-implementation of the recommendations of the Majithia Wage Board by the management. The present claim is without prejudice to the rights of the claimant to the Contempt of Court proceedings against the management for its deliberate, willful and intentional violation of the order dated 07.02.2014 of Hon'ble Supreme Court. The cause of action of the claimant is continuous. As such, the present claim is being filed within period of limitation. The claimant has not filed any other claim or petition before any Court of Law except the present one. The claim application is accompanied with calculation sheet Annexure 'A3'. Prayer is made that Award may be passed directing the managements to implement the Majithia Wage Board recommendations and re-fix the pay of the claimant accordingly with further prayer directing the managements to release arrears of pay to the tune of ₹ 33,39,811/- as per Annexure 'A3' with costs and to pay interest @ 18% on the arrears of pay from the date of its accrual till actual payment.

5. On notice, the management No. 1 & 2 contested the claim application by filing joint written statement on 30.07.2021 wherein preliminary objections are raised on the ground that the workman filed the fresh reference claiming re-fixation of pay and for recovery of ₹ 33,39,811/- as arrears of pay up to 01.02.2021 on account of implementation of recommendations of the Majithia Wage Board vide notification dated 11.11.2011 issued by Central Government by putting the wrong facts as well as by levelling the false allegations and by presenting the fabricated calculation sheet before this Tribunal. The claimant does not fall under the definition of the 'workman' as per Section 2(s)(ii to iv) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*). The claimant has failed to claim himself as 'workman' as per the provisions of the ID Act. As per the nature and status of post, the claimant does not fall within the definition of the 'workman' under the ID Act. The claim statement is liable to be dismissed on account of mis-joinder of the necessary parties as the alleged service rendered by the claimant with the answering management i.e. Chief Manager, HR (who has not been impleaded as party in the present reference) and authorities of Head Office have been impleaded by name. As per the facts, the recommendations of Majithia Wage Board were submitted to the Central Government on 31.12.2010 and same were notified by the Government of India on 11.11.2011. The said recommendations were put under challenge by various media agencies by way of filing the writ petitions before the Hon'ble Supreme Court of

India and the said cases were adjudicated upon before the Hon'ble Supreme Court of India in February 2014. The procedure under the scheme of the Act 1955, aggrieved employee seeking to recover any amount under the Act 1955, is required to first move an application before the State Government. As per Rule 36 of the Act 1955, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State Government along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, the above said requirement of Rule 36 of the Act 1955 has not been complied with. Hence, the proceeding in question is void ab-initio. As per Section 17 of the Act 1955, a Civil Suit does not lie after the expiry of 3 years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2018 for the benefit claimed by the claimant for the period of 2012. The claimant has annexed the calculation sheet showing the turn-over of the management only to get the benefit from the management which is a dispute in question of fact and cannot be decided in summary proceedings before this Tribunal. A dispute in question of fact can only be adjudicated upon by the concerned Civil Court. The basis of computation of the amount claimed has not been indicated by the claimant. The identity of the person who has computed the said amount has not been revealed by the claimant. Hence, the same is frivolous and baseless. The answering managements do have the spirit to honour the judgment delivered by the Hon'ble Supreme Court of India but in the present reference the claimant is not entitled to any benefit in compliance of the judgments delivered by the Hon'ble Supreme of India. No amount is due to the claimant under the provisions of Section 17 of the Act 1955. Further the amount claimed is based on non-existing right. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant has voluntarily chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board. Now nothing is payable to the claimant. The claimant had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking which he had given within the specified time of 3 weeks. Now after lapse of long time the claimant is raising dispute of non-payment of wages as per the Majithia Wage Board recommendations which is a simply after thought, illegal and baseless. No complaint can be entertained after passing almost 8 years of lapse of prescribed period. Since the year 1956 various Wage Boards have been constituted from time to time and the option has been given to the employees to opt for payment of existing pay scale and existing emoluments in all the three various Wage Boards. The Majithia Wage Board was finally notified on 11.11.2011. The employees were informed about the Majithia Wage Board recommendations and para 20(j) of the same for payment of the existing pay scale and existing emoluments by affixing copy of the Majithia Wage Board recommendations and notice on the notice board of the company. The employees have themselves opted to sign 20(j) of the Majithia Wage Board recommendations on their own accord and free will after well understanding the Majithia Wage Board recommendations. The allegations that employees signed 20(j) under coercion is totally false and baseless. The plea is beyond period of limitation. The plea of coercion is not tenable under Order VI Rule 4 CPC. The validity of para 20(j) of the Majithia Wage Board recommendations has not been challenged separately by any employees of any newspaper establishment even after 11.01.2014. The management DB Corp. Ltd. is a group of businesses including textile, MyFM, digital media, real estate, power and denim. As per the Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted.

6. Further on merits, the contents of para 1 to 5, 7 & 8 are replied being matter of record. It is further stated that the claimant is not entitled for the benefit of compliance of judgment passed by the Hon'ble Supreme Court of India. As per the group of the claimant and class of the Newspaper Establishment the claimant is receiving the wages and other benefits more than the Majithia Wage Board recommendations. The management is having various offices throughout the country and at the time of joining the management the claimant himself gave his consent for his transfer to some other place of work by signing the letter in that regard and the services of the claimant was transferred in a routine manner without any ill-will as per the service rules, but now the claimant is trying to regal out the same by leveling false and frivolous allegations against the management and the same appears to be fiction of the mind of the claimant and the managements reserve their right to initiate appropriate proceedings against the claimant before the competent court of law for leveling false and scandalous

allegations against the management. It is specifically denied that the claimant is entitled for revised salary and pay from the management based on the Majithia Wage Board for the period 11.11.2011 to 01.02.2021. The claimant is not entitled for any financial benefits as well as interest and the claim put forth by the claimant is not a very higher side. The claim is not maintainable in the question-answer form. No cause of action has accrued to the claimant to file the present claim and the same is hopelessly time barred. Rest of the averments of claim statement are denied as wrong. Prayer is made that the reference may be dismissed with exemplary cost.

7. The claimant filed replication wherein the contents of the written statement except admitted facts are denied being without any basis and frivolous and averments of claim statement are reiterated.

8. From the pleadings of the parties, following were framed vide order dated 27.08.2021:—

1. Whether the arrears of revision of pay to the applicant are to be paid by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the applicant does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Whether the claim of the applicant is bad on the ground of mis-joinder and non-joinder of necessary parties ? OPM
4. Whether the claim of the applicant is time barred ? OPM
5. Whether the claim of the applicant is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
6. Relief.

9. In evidence claimant Gurinder Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copy of documents Exhibit 'AW1/1' and Exhibit 'AW1/2'.

Exhibit 'AW1/1' is Gazette Notification dated 11.11.2011 of Government of India, Ministry of Labour & Employment.

Exhibit 'AW1/2' is calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Chartered Accountant Dhruv Gupta.

10. The claimant examined AW2 Dhruv Gupta, Chartered Accountant, who tendered his affidavit Exhibit 'AW2/A' along with documents Exhibit 'AW2/1' to Exhibit 'AW2/3'.

Exhibit 'AW2/1' is copy of pay slip of claimant Gurinder Singh for the month of October, 2019.

Exhibit 'AW2/2' is copy of Form 23-ACA, pursuant to Section 220 of the Company's Act, 1956.

Exhibit 'AW2/3' is the certificate dated 14.03.2021 issued by Dhruv Gupta, Partner for DGR & Associates Chartered Accountants.

11. The claimant also examined AW3 Avdhesh Gaur, who brought the summoned record and proved the copy of the same Exhibit 'AW3/1' to Exhibit 'AW3/6'.

Exhibit 'AW3/1' is annual appraisal letter dated 28.05.2014 with Annexure 'A' for the financial year 2013-14.

Exhibit 'AW3/2' is annual appraisal letter dated 29.07.2015 with Annexure 'A' for the financial year 2014-15.

Exhibit 'AW3/3' is annual appraisal letter dated 31.05.2015 with Annexure 'A' for the financial year 2015-16.

Exhibit 'AW3/4' is annual appraisal letter dated 30.08.2018 with Annexure 'A' for the financial year 2017-18.

Exhibit 'AW3/5' is annual appraisal letter dated 30.04.2019 with Annexure 'A' for the financial year 2018-19.

Exhibit 'AW3/6' is offer letter dated 17.10.2012.

12. On 16.11.2022 the Learned Representative for the claimant closed the evidence of the claimant-workman.

13. On the other hand, the managements examined MW1 Avdhesh Gaur - Assistant Manager HR Admn, Office of Dainik Bhaskar, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M3'.

Exhibit 'M1' is identity card of Avdhesh Guar.

Exhibit 'M2' is authority letter issued in favour of Avdhesh Gaur by DB Corp. Ltd.

Exhibit 'M3' is declaration dated 06.10.2012.

14. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide **Exhibit 'MX'**. It is pertinent to mention here that Exhibit 'M1' is numbered twice i.e. identity card of Avdhesh Gaur is numbered as Exhibit 'M1' and declaration dated 06.10.2012 put by the management to AW1 in his cross-examination as Exhibit 'M1'. In order to avoid any ambiguity, the identity card of Avdhesh Gaur is renumbered and hereafter referred as 'M1/A'.

15. On 14.08.2023 Learned Representative for the management No.1 & 2 closed oral evidence. On 06.11.2023 Learned Representative for management No.1 & 2 closed documentary evidence.

16. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1:

17. Onus to prove issue No.1 is on the workman.

18. Under this issue, the claimant Gurinder Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 has supported his oral version with documents Exhibit 'AW1/1' and Exhibit 'AW1/2'.

19. In order to prove the calculation of the arrears claimed, claimant examined AW2 Dhruv Gupta - Chartered Accountant and Partner of the DRG and Associates Firm, who vide his affidavit Exhibit 'AW2/A' has proved that the calculation sheet prepared by him. AW2 has supported his oral version with documents Exhibit 'AW2/1' to Exhibit 'AW2/3'.

20. The claimant has examined AW3 Avdhesh Gaur - Assistant Manager, HR Admn. Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh, who proved on record documents Exhibit 'AW3/1' to Exhibit 'AW3/6' (as detailed above).

21. On the other hand, the management has examined MW1 Avdhesh Gaur - Assistant Manager, HR Admn Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh. (MW1 in his testimony referred the management as respondent and in cross-examination of AWs referred the claimant as workman. In order to avoid any ambiguity the workman is hereinafter referred as claimant and the respondent is hereinafter referred as management.) MW1 vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager - HR & Admin (CPH2) with the managements and has been authorised by the management to depose on its behalf in this case before this Court. He is well conversant with the facts of the present case. MW1 further deposed that DB Corp. Ltd. is group of businesses including textile, MY FM, Digital Media, Real Estate, Power, Denim. As per Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per Para 20(j) of the Majithia Wage Board recommendations. The claimant has chosen / opted to retain his existing wages and existing emoluments as per Para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as he has already received wages according to option opted by him as per

Para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 further deposed that the claimant is not entitled for the benefit of the compliance of the judgment passed by the Hon'ble Supreme Court of India. MW1 has supported his oral version with documents Exhibit 'M1' to Exhibit 'M3'.

22. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly the claimant was appointed as Helper in the Dainik Bhaskar Newspaper on 06.10.2012. The salary of the claimant was fixed @ ₹ 6,000/- per month including all perks and allowances. After completion of probation period of six months, the services of the claimant were regularised. The claimant is still in the service of the management.

23. In the present case, the claimant is demanding arrears of pay as revised according to the recommendations of the Majithia Wage Board w.e.f. 11.11.2011 to 01.02.2021 as per notification dated 11.11.2011 / Exhibit 'AW1/1'. On the other hand, the managements have taken the plea that in view of the option exercised by the claimant under para 20(j) of the notification dated 11.11.2011, the claimant is not entitled to seek benefits of the Majithia Wage Board recommendations.

24. To my opinion, in order to decide whether para 20(j) of notification dated 11.11.2011 is attracted in this case, it would be apposite to go through para 20(j) of the notification, which is reproduced as below:-

"20(j) The revised pay scales shall become applicable to all employees with effect from 1st July 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scales and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

25. Learned Representative for the claimant argued that declaration dated 06.10.2012 Exhibit 'M1' is not valid in the eyes of law as it does not bear any passing reference of the designation, employee code, department and place of posting etc. The said declaration is not addressed to any official, countersigned or signed by any witness, without verification, acceptance, place not mentioned and not even attested by any notary. There is no passing reference of the existing wages of the claimant, the said declaration is not voluntarily and has been obtained under duress and under threat of transfer / termination. It is also apparent that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant. It is further argued by Learned Representative for the claimant that the declaration is two-sided legal transaction which means there has to be a second party to the declaration. In the present case, the alleged declaration is only signed by the claimant and there is no reference to whom the same is given, furnished. There is no counter-signature of the authority who had accepted it. On the other hand, it is argued by Learned Representative for the management that the declaration dated 06.10.2012 i.e. Exhibit 'M1' is a valid document and by way of exercising option in the form of above said declaration, the claimant has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. Therefore, nothing is payable to the claimant as he has already received wages according to the option opted by him under para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. It is further argued by Learned Representative for the management that the declaration Exhibit 'M1' is of dated 06.10.2012 and till date the claimant has not withdrawn the same alleging that it was obtained under pressure. Much stress has been laid upon the fact that the claimant has not withdrawn the said declaration as it was genuine and signed by him with his free consent. Learned Representative for the management referred case law reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G Diwan and 2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi**.

26. To my opinion, the argument advanced by the Learned Representative for the claimant that declaration Exhibit 'M1' is signed by the claimant under pressure of illegal transfer, suspension is devoid of merits because the claimant / AW1 when put to cross-examination stated that he identifies his signatures on declaration dated 06.10.2012 and copy of same is Exhibit 'M1'. AW1 further stated that from the date of his joining till date he has been given his due salary except the benefits of Majithia Wage Board. AW1 further stated

that he has never protested for the benefits of Majithia Wage Board while receiving salary. He did not reserve any right to receive the benefits of Majithia Wage Board at later stage. AW1 in para 10 of his affidavit Exhibit 'AW1/A' has pleaded that in the month of February 2019, he along with other employees have been cautioned by the management that in case, they press upon their demand of recovery of dues then they would be either transferred at other far distant places or their services would be terminated. To my opinion, the aforesaid plea taken by the claimant in para 10 of his affidavit does not stand proved because when put to cross-examination AW1 stated that he has written in his affidavit that in February 2019 he was issued warning. AW1 further stated that he did not lodge any complaint with the police or did not move any application in any Court in this regard. AW1 in his cross-examination has categorically stated that from the date of his joining till date he has not been transferred. Moreover, it is undeniable fact that the claimant is still in the service of the management. Claimant's witness AW3 Avdhesh Gaur in his cross-examination admitted as correct that during his service with the management the claimant has signed a declaration dated 06.10.2012 and copy of same is Exhibit 'M1'. AW3 admitted as correct that Exhibit 'M1' is part of the service guidelines of the claimant. The claimant has not raised any claim before the management for grant of Majithia Wage Board. AW3 further stated that as per the record the claimant has never raised any protest and has never reserved his right for claiming the benefits of Majithia Wage Board at the time of receiving his salary from the management.

27. In cross-examination of MW1 the claimant has put suggestion that the declaration is ante-dated and was procured in the year 2016, which is denied as wrong. To my opinion, the claimant's plea that his signatures on the declaration were obtained in the year 2016 is contrary to the facts pleaded in the claim statement. In the claim statement, the claimant had pleaded that he has not signed any declaration /settlement with any of the respondents whatsoever in order to waive off the benefits accrued under the Majithia Wage Board recommendations. In this manner, there is a complete denial of signing any declaration by the claimant in his claim statement. Both the pleas raised by the claimant i.e. non-signing of any declaration and obtaining his signature on declaration in the year 2016 are self-contradictory and destructive to each other. MW1 has denied the suggestion as wrong that management used to obtain signatures on blank paper while joining of the employees. The aforesaid plea taken by the claimant, which is denied by MW1 in his cross-examination is no evidence unless proved otherwise. The claimant is literate person. The claimant /AW1 has signed the claim statement, his affidavit Exhibit 'AW1/A' and his statement recorded in the Court in English language which does to prove that the claimant is literate person. To my opinion, no literate person or a person of ordinary prudence would sign any blank paper or would sign any wiring without knowing the contents thereof. Moreover, the claimant has failed to controvert the fact that before obtaining option under para 20(j) of notification dated 11.11.2011 the management had put the notice dated 12.11.2011 / Exhibit 'MX' on the notice board to apprise its employees about their right to exercise the option. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide Exhibit 'MX'. MW1 has denied the suggestion as wrong that notice is prepared afterwards. As per the settled law the suggestion denied by a witness is no evidence unless proved otherwise. The claimant has failed to bring on record any evidence to controvert the genuineness of notice Exhibit 'MX'. From the discussion made above, it is duly proved on record that the declaration dated 06.10.2012 Exhibit 'M1' is signed by the claimant on 06.10.2012 at the time of joining his service with his free will and consent and after knowing the contents thereof.

28. The claimant's plea that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant is also devoid of merits. There is no illegality, even if, the respondents-managements for the convenience of its employees supplied a proforma to exercise option under para 20(j) of notification dated 11.11.2011. It is for the concerned employee herein claimant to fill-in the proforma by exercising his own discretion. Since the claimant has given written declaration dated 06.10.2012 Exhibit 'M1', thereby exercised option to retain his existing pay scales and existing emoluments, without any protest, thus the claimant is estopped from seeking the arrears of revised pay as calculated by the Chartered Accountant. The case law referred by Learned Representative for the managements reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G Diwan and 2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi** are applicable to the present case to an extent.

29. In view of the aforesaid discussion, the claimant is not entitled to receive arrears of revised pay.

30. Accordingly, this issue is decided against the claimant-workman and in favour of management No. 1 & 2.

Issue No. 2:

31. Onus to prove this issue is on the managements.

32. Learned Representative for the management argued that the claimant does not fall within the definition of the 'workman' as defined under Section 2(s) of the ID Act as the nature of the work assigned to the claimant was supervisory. On the other hand, Learned Representative for the claimant argued that the claimant did not possess any managerial or supervisory position. The claimant is not possessing any power to appoint / dismiss any employee and also did not have power to grant leave to any employee. To support his arguments Learned Representative for the claimant referred case law reported in **2006(4) SCT 1** titled as **Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah** in para 11 to 13 held as below:—

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

13. The precise question came up for consideration in Ananda Bazar Patrika (P) Ltd. v. Workmen [(1970)3 SCC 248] wherein it was held :

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity...."

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. Ananda Bazar Patrika (supra) was followed by the court in large number of cases."

33. In the present case, it is undeniable fact that the claimant was appointed to the post of Helper. The management has failed to bring on record any oral or documentary evidence to show that the workman was discharging any kind of supervisory or managerial or administrative functions. In the absence of aforesaid evidence, it cannot be said that the claimant was exercising powers of control or supervision. The judgment **2006(4) SCT 1 (supra)** is applicable to the facts of the present case to an extent. Consequently, the management has failed to prove that the claimant had any authority to initiate departmental proceedings against the subordinates

or he had power of control or supervision in regard to recruitment, promotion etc. The management even failed to prove that the claimant had authority to sanction leave to any employee. The claimant, therefore, is a 'workman' as defined under Section 2(s) of the ID Act.

34. Accordingly, this issue is decided against the management No.1 & 2 and in favour of the claimant.

ISSUE No. 3 & 5 :

35. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

36. Onus to prove both these issues is on the managements. During course of arguments both these issues are not pressed by the managements.

37. Accordingly, both these issues are decided against management No. 1 & 2 and in favour of the claimant-workman.

ISSUE No. 4 :

38. Onus to prove this issue is on the managements.

39. Learned Representative for the managements contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2018 for the benefit claimed by the claimant for the period of year 2012. On the other hand, Learned Representative for the claimant argued that the claimant is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Assistant Labour Commissioner, U.T. Chandigarh on 11.09.2020. Thus, the claim of the claimant is well within time in as much as the cause of action in the present case is recurring in nature.

40. As proved from the documents on judicial file, the claim raised the application under Section 17(1) of the Act 1955 before the Assistant Labour Commissioner, U.T. Chandigarh on 14.02.2020 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal / Court vide reference dated 11.09.2020. Moreover, the contention raised by Learned Representative for the claimant carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

41. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Relief :

42. In the view of foregoing finding on the issue No.1 above, this reference is declined and answered against the claimant-workman. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 06.11.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 2nd February, 2024

No. 13/1/9746-HII(2)-2024/1874.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **64/2020** dated **06.11.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RANANJAY KUMAR SINGH R/O VILLAGE & POST SUITHAKALAN, DISTRICT JAUNPUR,
UTTAR PRADESH - 223105 (Workmen)

AND

1. M/S DAINIK BHASKAR CORPORATION LIMITED, PLOT NO.280, SARKHEJ GHANDINAGAR HIGHWAY, NEAR YMCA CLUB, MAKARBA, AHMEDABAD, GUJARAT - 380051 THROUGH ITS MANAGING DIRECTOR.
2. M/S DAINIK BHASKAR CORPORATION LIMITED, CHANDIGARH UNIT, PLOT NO.11-12, GROUND FLOOR, DAKSHIN MARG, SECTOR 25, CHANDIGARH - 160036 THROUGH ITS CHIEF EXECUTIVE. (Management)

AWARD

1. Vide Endorsement No.13/1/9746-HII(2)-2020/11452 Dated 28.08.2020 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the claim application filed by Rananjay Kumar Singh (*hereinafter referred "claimant"*) to the M/s Dainik Bhaskar Corporation Limited & Another (*hereinafter referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*hereinafter in short referred "Act 1955"*) in following words:-

"Whether the arrears of revision of pay to namely Sh. Rananjay Kumar Singh Resident of Village & Post Suithakalan, District Jaunpur, Uttar Pradesh - 223105 (Workman/ applicant) were to be paid by M/s Dainik Bhaskar Corporation Limited, Plot No. 280, Sarkhej Ghandinagar Highway, Near YMCA Club, Makarba, Ahmedabad, Gujarat - 380051 through its Managing Director and M/s Dainik Bhaskar Corporation Limited, Chandigarh Unit, Plot No.11-12, Ground Floor, Dakshin Marg, Sector 25, Chandigarh - 160036 through its Chief Executive (Managements) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"

2. Upon notice, the claimant-workman appeared through his Representative Shri Ajay Sharma. Statement of claim was filed on 26.03.2021.

3. Briefly stated the averments of claim statement are that the claimant was working as Machine Man with Dainik Bhaskar Newspaper having its registered office at Sector 25, Chandigarh. On account of revision of pay & other allowances accrued on the acceptance of the recommendations of the Majithia Wage Board which were accepted by the Government of India and notified in the Gazette of India on 11.11.2011, a substantial amount is due from Dainik Bhaskar / employer which is denied. On account of fact that a large number of persons are employed in the various newspapers and periodical being published in India and such

newspaper or periodical establishment had devised its own way of employing persons to run its working, the Government of India constituted the Press Commission to enquire into the conditions of employment of working journalists. The Press Commission made certain recommendations for improvement and regulation of such service conditions by means of legislation. Accordingly, The Working Journalists (Conditions of Service) and Miscellaneous Provisions Bill was introduced in the Parliament. Consequently, on 20.12.2015 the Act 1955 was enacted to regulate certain conditions of service including minimum period of notice, gratuity, provident fund, settlement of industrial dispute, leave with pay, hours of work and minimum wages of the Working Journalists and the other persons employed in the Newspaper Establishments. From the harmonious joint reading of the provisions of the Act 1955, it is apparent that the Central Government has been competent to fix and revise the wages of the journalists and other employees having been governed by the Act 1955. A procedure has been laid down for fixing and revising rate of wages for which a mandate is casted upon the Central Government to constitute a Wage Board in the manner prescribed in it, which shall examine all the relevant factors like cost of living, the prevalent rate of wages for comparable employment etc. for the ascertainment of the rate of wages and thereafter present its recommendation to the Central Government. On the receipt of such recommendation by the Wage Board, the Central Government is also competent to accept, reject and alter any of the recommendations as may deemed fit. Consequently, the Central Government shall notify the recommendations by way of an Award in the official Gazette of India. In pursuance to an exercise undertaken by Department of Labour and Employment, Union of India under Section 9 of Act 1955, the purpose of enabling the Central Government to fix or revise rate of wages for the working journalists and non-journalists newspaper employees, a Wage Board was constituted under the Chairmanship of Hon'ble Mr. Justice G. R. Majithia (Retd.) and the Wage Board was commonly known as Majithia Wage Board. After examining all the relevant factors regulating the revision of pay and affording opportunity to all the affected parties, the Majithia Wage Board finally submitted its recommendations on 31.12.2010 to the Union of India. On 25.10.2011 the Union of India accepted the same in toto without any modification. The said recommendations were further notified in the official Gazette vide notification dated 11.11.2011. On the publication of the recommendation of the Majithia Wage Board by way of an Award vide Gazette Notification dated 11.11.2011, various newspaper establishments and media houses vide W.P. (C) No.538 of 2011 had made a challenge under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India alleging Act 1955 being *ultra-vires* as it infringes the fundamental rights guaranteed under Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India. There was also a challenge to the validity of notification dated 11.11.2011 issued by the Union of India. The bunch of aforesaid petitions remained pending for hearing before the Hon'ble Apex Court for 3 years and ultimately while disagreeing with the contentions raised by the newspaper establishments and media houses, the Hon'ble Apex Court dismissed all the petitions vide its judgment dated 07.02.2014 while holding that the recommendations of Majithia Wage Board are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Despite the dismissal of the Writ Petitions challenging the validity of Act 1955 and notification dated 11.11.2011, and further directions of the Hon'ble Apex Court for payment of arrears, no compliance was being made by the news agencies. The employees had also taken up their issue before the management No.1 & 2 for payment of revised wages and arrears as per the directions of the Hon'ble Apex Court, however, they were told that a review application have been preferred by them and further course of action would be taken up after its adjudication. Another order dated 13.10.2017 was passed by the Hon'ble Apex Court clarifying the previous judgment dated 19.06.2017 to the extent that the disputes referred to adjudication under Section 17(2) of the Act 1955, will be disposed of by the concerned Labour Court / Industrial Tribunal as expeditiously as possible preferably within six months of the reference being made.

4. It is further averred that the claimant was appointed as Assistant Machine Man in the Production Division of Dainik Bhaskar Newspaper on 08.03.2008. The salary of the claimant was fixed @ ₹ 7,000/- per month including all perks and allowances. Initially he was on probation for 6 months and later on his services were regularised. The services of the claimant were being regulated under the Act 1955. As per the notification, the employees have been categorised in groups and as such the claimant falls within the ambit of Group 4 Factory Staff in Majithia Wage Board. The request of the claimant and others was kept pending on the ground that the matter was being considered by the management and would take a decision expeditiously. Despite passage of more than 4 years of dismissal of Writ Petitions by the Hon'ble Apex Court, no payment was

made except lame excuses given by the management. In the month of February 2019 the claimant along with other employees has also been cautioned by the management that in case, they press upon their demand of recovery of dues, then they would be either transferred at other far distant places or their services would be terminated. The amount which is liable to be recovered from the management based on revised pay on the basis of Majithia Wage Board is legitimate dues of the claimant and as such the claimant is not willing to forego the same in any manner. The claimant has got calculated his estimate revised salary and arrears of pay from a competent Chartered Accountant as per the Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, as such the total amount of ₹ 72,36,841/- including interest @ 18% per annum is due from the management. Despite the demand of detailed arrears of salary calculated as per Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, the management has intentionally and deliberately not been implementing the recommendations of the Majithia Wage Board and has not given any benefit to the claimant in spite of several oral and written requests. The claimant has not signed any declaration in order to waive of the benefits accrued under the Majithia Wage Board recommendations. The management had indulged in the process of denying the claims stating that the recommendations of the wage board were not applicable on the claimant and other employees and forcing the employees to sign on pre-typed formats and declarations illegally. The employees refusing to do so were being victimized by way of illegal transfer, suspension and other colourable exercise of the powers of the management and a reign of terror inside the establishment had been created by the management. The management be asked to furnish the details of the salary paid to the employee of the establishment before 07.02.2014 and being paid now and the reasons for non-implementation of the recommendations of the Majithia Wage Board by the management. The present claim is without prejudice to the rights of the claimant to the Contempt of Court proceedings against the management for its deliberate, willful and intentional violation of the order dated 07.02.2014 of Hon'ble Supreme Court. The cause of action of the claimant is continuous. As such, the present claim is being filed within period of limitation. The claimant has not filed any other claim or petition before any Court of Law except the present one. The claim application is accompanied with calculation sheet Annexure 'A3'. Prayer is made that Award may be passed directing the managements to implement the Majithia Wage Board recommendations and re-fix the pay of the claimant accordingly with further prayer directing the managements to release arrears of pay to the tune of ₹ 72,36,841/- as per Annexure 'A3' with costs and to pay interest @ 18% on the arrears of pay from the date of its accrual till actual payment.

5. On notice, the management No. 1 & 2 contested the claim application by filing joint written statement on 30.07.2021 wherein preliminary objections are raised on the ground that the workman filed the fresh reference claiming re-fixation of pay and for recovery of ₹ 72,36,841/- as arrears of pay up to 01.02.2021 on account of implementation of recommendations of the Majithia Wage Board vide notification dated 11.11.2011 issued by Central Government by putting the wrong facts as well as by levelling the false allegations and by presenting the fabricated calculation sheet before this Tribunal. The claimant does not fall under the definition of the 'workman' as per Section 2(s)(ii to iv) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*). The claimant has failed to claim himself as 'workman' as per the provisions of the ID Act. As per the nature and status of post, the claimant does not fall within the definition of the 'workman' under the ID Act. The claim statement is liable to be dismissed on account of mis-joinder of the necessary parties as the alleged service rendered by the claimant with the answering management i.e. Chief Manager, HR (who has not been impleaded as party in the present reference) and authorities of Head Office have been impleaded by name. As per the facts, the recommendations of Majithia Wage Board were submitted to the Central Government on 31.12.2010 and same were notified by the Government of India on 11.11.2011. The said recommendations were put under challenge by various media agencies by way of filing the writ petitions before the Hon'ble Supreme Court of India and the said cases were adjudicated upon before the Hon'ble Supreme Court of India in February 2014. The procedure under the scheme of the Act 1955, aggrieved employee seeking to recover any amount under the Act 1955, is required to first move an application before the State Government. As per Rule 36 of the Act 1955, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State Government along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, the above said requirement of Rule 36 of the Act 1955 has not been complied with. Hence, the proceeding in question is void *ab-initio*. As per Section 17 of the Act 1955, a Civil Suit does not lie after the expiry of 3 years of the cause of action. In the present case, the

demand notice was received by the Assistant Labour Commissioner, Chandigarh in the year 2020 for the benefit claimed by the claimant for the year 2011 to 2021. The claimant has annexed the calculation sheet showing the turn-over of the management only to get the benefit from the management which is a dispute in question of fact and cannot be decided in summary proceedings before this Tribunal. A dispute in question of fact can only be adjudicated upon by the concerned Civil Court. The basis of computation of the amount claimed has not been indicated by the claimant. The identity of the person who has computed the said amount has not been revealed by the claimant. Hence, the same is frivolous and baseless. The answering managements do have the spirit to honour the judgment delivered by the Hon'ble Supreme Court of India but in the present reference the claimant is not entitled to any benefit in compliance of the judgments delivered by the Hon'ble Supreme of India. No amount is due to the claimant under the provisions of Section 17 of the Act 1955. Further the amount claimed is based on non-existing right. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant has voluntarily chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board. Now nothing is payable to the claimant. The claimant had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking which he had given within the specified time of 3 weeks. Now after lapse of long time the claimant is raising dispute of non-payment of wages as per the Majithia Wage Board recommendations which is a simply after thought, illegal and baseless. No complaint can be entertained after passing almost 8 years of lapse of prescribed period. Since the year 1956 various Wage Boards have been constituted from time to time and the option has been given to the employees to opt for payment of existing pay scale and existing emoluments in all the three various Wage Boards. The Majithia Wage Board was finally notified on 11.11.2011. The employees were informed about the Majithia Wage Board recommendations and para 20(j) of the same for payment of the existing pay scale and existing emoluments by affixing copy of the Majithia Wage Board recommendations and notice on the notice board of the company. The employees have themselves opted to sign 20(j) of the Majithia Wage Board recommendations on their own accord and free will after well understanding the Majithia Wage Board recommendations. The allegations that employees signed 20(j) under coercion is totally false and baseless. The plea is beyond period of limitation. The plea of coercion is not tenable under Order VI Rule 4 CPC. The validity of para 20(j) of the Majithia Wage Board recommendations has not been challenged separately by any employees of any newspaper establishment even after 11.01.2014. The management DB Corp. Ltd. is a group of businesses including textile, MyFM, digital media, real estate, power and denim. As per the Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted.

6. Further on merits, the contents of para 1 to 5, 7 & 8 are replied being matter of record. It is further stated that the claimant is not entitled for the benefit of compliance of judgment passed by the Hon'ble Supreme Court of India. As per the group of the claimant and class of the Newspaper Establishment the claimant is receiving the wages and other benefits more than the Majithia Wage Board recommendations. The management is having various offices throughout the country and at the time of joining the management the claimant himself gave his consent for his transfer to some other place of work by signing the letter in that regard and the services of the claimant was transferred in a routine manner without any ill-will as per the service rules, but now the claimant is trying to regal out the same by leveling false and frivolous allegations against the management and the same appears to be fiction of the mind of the claimant and the managements reserve their right to initiate appropriate proceedings against the claimant before the competent court of law for leveling false and scandalous allegations against the management. It is specifically denied that the claimant is entitled for revised salary and pay from the management based on the Majithia Wage Board for the period 11.11.2011 to 01.02.2021. The claim is not maintainable in the question-answer form. No cause of action has accrued to the claimant to file the present claim and the same is hopelessly time barred. Rest of the averments of claim statement are denied as wrong. Prayer is made that the reference may be dismissed with exemplary cost.

7. The claimant filed replication wherein the contents of the written statement except admitted facts are denied being without any basis and frivolous and averments of claim statement are reiterated.

8. From the pleadings of the parties, following were framed vide order dated 16.08.2021 :-
 1. Whether the arrears of revision of pay to the applicant are to be paid by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
 2. Whether the applicant does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
 3. Whether the claim of the applicant is bad on the ground of mis-joinder and non-joinder of necessary parties ? OPM
 4. Whether the claim of the applicant is time barred ? OPM
 5. Whether the claim of the applicant is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
 6. Relief.

9. In evidence claimant Rananjay Kumar examined AW1 Dhruv Gupta, Chartered Accountant, who tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'AW1/1' to Exhibit 'AW1/3'.

Exhibit 'AW1/1' is copy of Employees' Provident Fund Member Passbook of Rananjay Kumar Singh, bearing Member ID No.PBCHD00209890000000624, bearing establishment ID. / Name PBCHD0020989000/DB Corporation Limited, UAN No.100307703166, incorporating employee share ₹ 17,233/- and employer share ₹42,666/- for the period w.e.f. 31.03.2009 to January 2020.

Exhibit 'AW1/2' is copy of Form 23-ACA, pursuant to Section 220 of the Company's Act, 1956.

Exhibit 'AW1/3' is the certificate dated 14.03.2021 issued by Dhruv Gupta, Partner for DGR & Associates Chartered Accountants.

10. The claimant examined himself as AW2 and tendered his affidavit Exhibit 'AW2/A' along with copy of documents Exhibit 'AW2/1' and Exhibit 'AW2/2'.

Exhibit 'AW2/1' is Gazette Notification dated 11.11.2011 of Government of India, Ministry of Labour & Employment.

Exhibit 'AW2/2' is calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Chartered Accountant Dhruv Gupta.

11. The claimant also examined AW3 Avdhesh Gaur, who brought the summoned record and proved the copy of the same Exhibit 'AW3/1' to Exhibit 'AW3/5'.

Exhibit 'AW3/1' is salary breakup for the month of March 2008.

Exhibit 'AW3/2' is appraisal letter dated 28.05.2014 with revised CTC structure w.e.f. 01.04.2014.

Exhibit 'AW3/3' is annual appraisal letter dated 29.07.2015 for the financial year 2014-15.

Exhibit 'AW3/4' is annual appraisal letter dated 30.08.2018 for the financial year 2017-18.

Exhibit 'AW3/5' is annual appraisal letter dated 30.04.2019 for the financial year 2018-19.

12. On 03.10.2022 the Learned Representative for the claimant closed the evidence of the claimant.

13. On the other hand, the managements examined MW1 Avdhesh Gaur - Assistant Manager HR Admn, Office of Dainik Bhaskar, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M3'.

Exhibit 'M1' is identity card of Avdhesh Guar.

Exhibit 'M2' is authority letter issued in favour of Avdhesh Gaur by DB Corp. Ltd.

Exhibit 'M3' is declaration dated 15.11.2011 of claimant Rananjay Kumar.

14. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide **Exhibit 'MX'**. It is pertinent to mention here that Exhibit 'MW1/A' is numbered twice i.e. affidavit of MW1 Avdhesh Gaur is number as Exhibit 'MW1/A' and declaration dated 15.11.2011 put by the management to AW2 in his cross-examination as Exhibit 'MW1/A'. In order to avoid any ambiguity, the affidavit of MW1 is renumbered and hereafter referred as 'MW1/AA'.

15. On 14.08.2023 Learned Representative for the management No.1 & 2 closed oral evidence. On 06.11.2023 Learned Representative for management No.1 & 2 closed documentary evidence.

16. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

17. Onus to prove issue No.1 is on the workman.

18. Under this issue, the claimant Rananjay Kumar examined himself as AW2 and vide his affidavit Exhibit 'AW2/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW2 has supported his oral version with documents Exhibit 'AW2/1' and Exhibit 'AW2/2'.

19. In order to prove the calculation of the arrears claimed, claimant examined AW1 Dhruv Gupta - Chartered Accountant and Partner of the DRG and Associates Firm, who vide his affidavit Exhibit 'AW1/A' has proved that the calculation sheet prepared by him. AW1 has supported his oral version with documents Exhibit 'AW1/1' to Exhibit 'AW1/3'.

20. The claimant has examined AW3 Avdhesh Gaur - Assistant Manager, HR Admn. Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh, who proved on record documents Exhibit 'AW3/1' to Exhibit 'AW3/5' (as detailed above).

21. On the other hand, the management has examined MW1 Avdhesh Gaur - Assistant Manager, HR Admn Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh. (MW1 in his testimony referred the management as respondent and in cross-examination of AWs referred the claimant as workman. In order to avoid any ambiguity the workman is hereinafter referred as claimant and the respondent is hereinafter referred as management.) MW1 vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager - HR & Admin (CPH2) with the managements and has been authorised by the management to depose on its behalf in this case before this Court. He is well conversant with the facts of the present case. MW1 further deposed that DB Corp. Ltd. is group of businesses including textile, MY FM, Digital Media, Real Estate, Power, Denim. As per Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per Para 20(j) of the Majithia Wage Board recommendations. The claimant has chosen / opted to retain his existing wages and existing emoluments as per Para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as he has already received wages according to option opted by him as per Para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 further deposed that the claimant is not entitled for the benefit of the compliance of the judgment passed by the Hon'ble Supreme Court of India. MW1 has supported his oral version with documents Exhibit 'M1' to Exhibit 'M3'.

22. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly the claimant was appointed as Assistant Machineman in the Dainik Bhaskar Newspaper on 08.03.2008. The salary of the claimant was fixed @ ₹ 7,000/- per month including all perks and allowances. After completion of probation period of six months, the services of the claimant were regularised. The claimant is still in the service of the management.

23. In the present case, the claimant is demanding arrears of pay as revised according to the recommendations of the Majithia Wage Board w.e.f. 11.11.2011 to 01.02.2021 as per notification dated 11.11.2011 /

Exhibit 'AW2/1'. On the other hand, the managements have taken the plea that in view of the option exercised by the claimant under para 20(j) of the notification dated 11.11.2011, the claimant is not entitled to seek benefits of the Majithia Wage Board recommendations.

24. To my opinion, in order to decide whether para 20(j) of notification dated 11.11.2011 is attracted and for better appreciation para 20(j) of the notification, is reproduced as below :-

"20(j) The revised pay scales shall become applicable to all employees with effect from 1st July 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scales and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

25. The management had put declaration dated 15.11.2011 Exhibit 'MW1/A' in cross-examination of AW2 and in its evidence proved declaration dated 15.11.2011 vide Exhibit 'M3'. Learned Representative for the claimant argued that declaration Exhibit 'MW1/A' / Exhibit 'M3' is not valid in the eyes of law as it does not bear any passing reference of the designation, employee code, department and place of posting etc. The said declaration is not addressed to any official, countersigned or signed by any witness, without verification, acceptance, place not mentioned and not even attested by any notary. There is no passing reference of the existing wages of the claimant, the said declaration is not voluntarily and has been obtained under duress and under threat of transfer / termination. It is also apparent that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant. It is further argued by Learned Representative for the claimant that the declaration is two-sided legal transaction which means there has to be a second party to the declaration. In the present case, the alleged declaration is only signed by the claimant and there is no reference to whom the same is given, furnished. There is no counter-signature of the authority who had accepted it. On the other hand, it is argued by Learned Representative for the management that the declaration dated 15.11.2011 i.e. Exhibit 'MW1/A' / Exhibit 'M3' is a valid document and by way of exercising option in the form of above said declaration, the claimant has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. Therefore, nothing is payable to the claimant as he has already received wages according to the option opted by him under para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. It is further argued by Learned Representative for the management that the declaration Exhibit 'MW1/A' / Exhibit 'M3' is of dated 15.11.2011 and till date the claimant has not withdrawn the same alleging that it was obtained under pressure. Much stress has been laid upon the fact that the claimant has not withdrawn the said declaration as it was genuine and signed by him with his free consent. Learned Representative for the management referred case law reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi**.

26. To my opinion, the argument advanced by the Learned Representative for the claimant that declaration Exhibit 'MW1/A' / Exhibit 'M3' is signed by the claimant under pressure of illegal transfer, suspension is devoid of merits because the claimant / AW2 when put to cross-examination stated that he identifies his signatures on Exhibit 'MW1/A', which was signed on 15.11.2011. AW2 admitted as correct that he has not raised any protest and did not challenge Exhibit 'MW1/A'. AW2 in para 12 of claim statement and his affidavit Exhibit 'AW2/A' has pleaded that in the month of February 2019, he along with other employees have been cautioned by the management that in case, they press upon their demand of recovery of dues then they would be either transferred at other far distant places or their services would be terminated. To my opinion, the aforesaid plea taken by the claimant in para 12 of his claim and affidavit does not stand proved because when put to cross-examination AW2 stated that he has never been transferred since the date of joining. He is working at the same place of posting where he initially joined. It is undeniable fact that the claimant is still in the service of the management. In cross-examination of MW1 the claimant has put suggestion that the declaration is ante-dated and was procured in the year 2016, which is denied as wrong. To my opinion, the claimant's plea that his signatures on the declaration were obtained in the year 2016 is contrary to the facts pleaded in the claim statement. In the claim statement, the claimant had pleaded that he has not signed any declaration / settlement with any of the managements whatsoever in order to waive off the benefits accrued under the Majithia Wage Board recommendations. In this manner, there is a complete denial of signing any declaration by the claimant in

his claim statement. Both the pleas raised by the claimant i.e. non-signing of any declaration and obtaining his signature on declaration in the year 2016 are self-contradictory and destructive to each other. The claimant's witness AW3 Avdhesh Gaur in his cross-examination admitted as correct that during his service with the management the claimant has signed a declaration dated 15.11.2011 and copy of same is Exhibit 'MW1/A'. AW3 admitted as correct that Exhibit 'MW1/A' is part of the service guidelines of the claimant. The claimant has not raised any claim before the management for grant of Majithia Wage Board till date. MW1 has denied the suggestion as wrong that management used to obtain signatures on blank paper while joining of the employees. The aforesaid plea taken by the claimant which is denied by MW1 in his cross-examination is no evidence unless proved otherwise. The claimant is literate person. The claimant / AW1 in his cross-examination has stated that he is 12th standard passed from Hindi medium. He is conversant with the English language. To my opinion, no literate person or a person of ordinary prudence would sign any blank paper or would sign any wiring without knowing the contents thereof. Moreover, the claimant has failed to controvert the fact that before obtaining option under Clause 20(j) of notification dated 11.11.2011 the management had put the notice dated 12.11.2011 / Exhibit 'MX' on the notice board to apprise its employees about their right to exercise the option. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide Exhibit 'MX'. MW1 has denied the suggestion as wrong that notice is prepared afterwards. As per the settled law the suggestion denied by a witness is no evidence unless proved otherwise. The claimant has failed to bring on record any evidence to controvert the genuineness of notice Exhibit 'MX'. From the discussion made above, it is duly proved on record that the declaration dated 15.11.2011 Exhibit 'MW1/A' / Exhibit 'M3' is signed by the claimant on 15.11.2011 with his free will and consent and after knowing the contents thereof.

27. The claimant's plea that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant is also devoid of merits. There is no illegality, even if, the managements for the convenience of its employees supplied a proforma to exercise option under para 20(j) of notification dated 11.11.2011. It is for the concerned employee herein claimant to fill-in the proforma by exercising his own discretion. Since the claimant has given written declaration dated 15.11.2011 'MW1/A' / Exhibit 'M3', thereby exercised option to retain his existing pay scales and existing emoluments, without any protest, thus the claimant is estopped from seeking the arrears of revised pay as calculated by the Chartered Accountant. The case law referred by Learned Representative for the managements reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G. Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi** are applicable to the present case to an extent.

28. In view of the aforesaid discussion, the claimant is not entitled to receive arrears of revised pay.

29. Accordingly, this issue is decided against the claimant-workman and in favour of management No. 1 & 2.

Issue No. 2 :

30. Onus to prove this issue is on the managements.

31. Learned Representative for the management argued that the claimant does not fall within the definition of the 'workman' as defined under Section 2(s) of the ID Act as the nature of the work assigned to the claimant was supervisory. On the other hand, Learned Representative for the claimant argued that the claimant did not possess any managerial or supervisory position. The claimant is not possessing any power to appoint / dismiss any employee and also did not have power to grant leave to any employee. To support his arguments Learned Representative for the claimant referred case law reported in **2006(4) SCT 1** titled as **Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah** in para 11 to 13 held as below :-

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name

assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

13. *The precise question came up for consideration in **Ananda Bazar Patrika (P) Ltd. v. Workmen [(1970)3 SCC 248]** wherein it was held :*

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity....."

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. Ananda Bazar Patrika (supra) was followed by the court in large number of cases."

32. In the present case, it is undeniable fact that the claimant was appointed to the post of Assistant Machineman. The management has failed to bring on record any oral or documentary evidence to show that the workman was discharging any kind of supervisory or managerial or administrative functions. In the absence of aforesaid evidence, it cannot be said that the claimant was exercising powers of control or supervision. The judgment **2006(4) SCT 1 (supra)** is applicable to the facts of the present case to an extent. Consequently, the management has failed to prove that the claimant had any authority to initiate departmental proceedings against the subordinates or he had power of control or supervision in regard to recruitment, promotion etc. The management even failed to prove that the claimant had authority to sanction leave to any employee. The claimant, therefore, is a 'workman' as defined under Section 2(s) of the ID Act.

33. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Issue No. 3 & 5 :

34. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

35. Onus to prove both these issues is on the managements. During course of arguments both these issues are not pressed by the managements.

36. Accordingly, both these issues are decided against management No. 1 & 2 and in favour of the claimant-workman.

Issue No. 4 :

37. Onus to prove this issue is on the managements.

38. Learned Representative for the managements contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in 2020 for the benefit claimed by the claimant for the year 2011 to 2021. On the other hand, Learned Representative for the claimant argued that the claimant is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing

month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Assistant Labour Commissioner, U.T. Chandigarh on 28.08.2020. Thus, the claim of the claimant is well within time in as much as the cause of action in the present case is recurring in nature.

39. As proved from the documents on judicial file, the claim raised the application under Section 17(1) of the Act 1955 before the Assistant Labour Commissioner, U.T. Chandigarh on 26.02.2020 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal / Court vide reference dated 28.08.2020. Moreover, the contention raised by Learned Representative for the claimant carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

40. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Relief :

41. In the view of foregoing finding on the issue No.1 above, this reference is declined and answered against the claimant-workman. Appropriate Government be informed. File be consigned to the record room.

Dated : 06.11.2023.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Manohar, S/o Daleep, # 173, Phase-1, Babu Dham Colony, Sector 26, Chandigarh, have changed the name of my minor daughter from Radhika to Kayna.

[230-1]

I, Ashok Kumar Mitra, S/o Sh. Maninder Nath Mitra, R/o 1300, Lane-4/a, (B.B.M.B.Colony), Sector 35-B, Chandigarh-160022, have changed my minor daughter's name from Krishna Mitra to Veeradhya Mitra.

[231-1]

I, Ruksar Parveen, W/o Vikas Kumar, R/o H. No. 492/A, Near Railway Station, Daria, Chandigarh, have changed my name from Ruksar Parveen to Ruhi.

[232-1]

I, Poonam, W/o Ram Mehar, R/o H. No. 328/2, Sector 32-A, Chandigarh, have changed my name from Poonam to Poonam Devi.

[233-1]

I, Surjit Kaur, W/o Late Sh. Sukhwinder Singh, R/o # 113, Palsaura, U.T., Chandigarh. I have changed my name Surjit Kaur to Surjeet Kaur.

[234-1]

I, Priyanka Devi, W/o Sandeep Dogra, R/o # 206, Sector 38-A, Chandigarh. I have changed my name from Priyanka Devi to Priyanka Dogra.

[235-1]

I, Barinder Kumar, S/o Sh. Bani Chand, R/o 1603, Chaman Colony, Dhanas, Chandigarh. I have changed my name from Barinder Kumar to Varinder Kumar.

[236-1]

I, Rohit, S/o Bindeshwar Shah, # 768/2, Near Shiv Mandir, Thakurdwara, Manimajra, Chandigarh, have changed my name to Rohit Shah.

[237-1]

I, Bindeshwar Singh, S/o Parsuram Shah, # 768/2, Near Shiv Mandir, Thakurdwara, Manimajra, Chandigarh, have changed my name name to Bindeshwar Shah.

[238-1]

I, Parvati, W/o Bindeshwar Shah, # 768/2, Near Shiv Mandir, Thakurdwara, Manimajra, Chandigarh, have changed my name to Parwati Devi.

[239-1]

I, Akash Kumar, S/o Chander Hans, R/o 489, Village Daria, Chandigarh's 10th and 12th certificate my name is wrongly mentioned as Aakash and my Father's name Chanderhas. Whereas, my correct name is Akash Kumar and my father's name is Chander Hans.

[240-1]

मैं, Ranjodh Singh, पुत्र जगजीत सिंह, निवासी 2252, सेक्टर 15 - सी, चंडीगढ़, ने अपना नाम Ranjodh Singh से बदलकर Ranjodh Singh Chhokar रख लिया है ।

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